

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

TA No. 21 of 2014

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Prasanta Kumar Das, S/o Ananda Chandra Das.
2. Surit Kumar Nayak, S/o Late Brahmananda Nayak.
Both are Junior Accountants, SAI Water Sports Centre, At/PO-Jagatput, Dist-Cuttack, And SAI Training Centre, Dhenkanal.

.....Applicants.

VERSUS

1. Union of India, represented through the Secretary, Sports Authority of India, J.N.Stadium, New Delhi – 3.
2. Director General, Sports Authority of India, J.N.Stadium, New Delhi-3.
3. Regional Director, Sports Authority of India, Salt lake City, N.S.E.C., Kolkata – 98.
4. Asst. Director, Sports Authority of India, SAI Water Sports Centre, At/PO-Jagatpur, Dist.-Cuttack.

.....Respondents.

For the applicant : None

For the respondents: Mr.M.S.Mohapatra, counsel

Heard & reserved on : 15.11.2019 Order on : 28.11.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

Both the applicants have prayed for the following reliefs in this Transfer Application, for which he had filed the W.P. (C) No. 2401/2003, which was transferred to this Tribunal vide order dated 12.9.2014 of Hon'ble High Court:

"The Petitioners, therefore, most humbly pray that this Hon'ble Tribunal pleased to direct the respondents that the petitioners are eligible and accordingly, allow them to appear in the Limited Departmental Examination and consider their cases for regularization giving due weightage to the experience gained by them.

AND

Direct the Respondents to treat the Applicants as regular Junior Accountant from the date of initial appointment or alternatively from the date of completion of 10 years as per Apex Court direction in M.L.Keshari case with consequential benefits.

And issue any other order/direction which would afford complete relief to the petitioners in the facts and circumstances of the case;

And for this act of kindness, the petitioners as in duty bound shall every pray."

2. During pendency of the application, the applicants prayed to amend the application, which was allowed vide order dated 17.4.2018 of this Tribunal and accordingly, the consolidated Transfer Application (referred hereinafter as TA) was filed by the applicants. Vide order dated 12.3.2003 of Hon'ble High Court, two posts of Junior Accountant were kept vacant as an interim measure. The

applicants allege injustice in the matter of their eligibility to participate in the Limited Departmental Competitive Examination (in short LDCE) for 8 posts of Junior Accountants vide the circular dated 26.6.2002 (Annexure-3). The applicants have stated in the TA that they were initially appointed in 1993 on casual basis with one day break till October, 1995 and thereafter, they were continued without any break in service. It is also averred that although they were allowed the basic pay of Rs. 4000/- plus DA from 17.9.1999 (Annexure-2), they were not considered to be eligible to participate in the LDCE notified on 26.6.2002 on the ground that they were casual employee, as revealed from the circular dated 5.6.2000 (Annexure-9).

3. It is stated in the TA that out of 16 posts as per the circular dated 26.6.2002, 50% of the posts were to be filled up by direct recruitment and 50% of posts are to be filled up through LDCE from among the regular employees of the Sports Authority of India (in short SAI). It is further stated that the said LDCE was not held and vide a subsequent circular at Annexure-10, 7 posts of Junior Accountants were published. The applicants appeared in the said examination and although they secured more than 40% of marks in the written test, they were not called for the skill test. It is stated that the respondents have kept 2 posts of Junior Accountants vacant in compliance of the order dated 12.3.2003 of Hon'ble High Court. By way of filing this TA, the applicants have prayed to be allowed to appear in the LDCE and for regularization of their service.

4. Counter filed by the respondents stated that the SAI is a registered society under the administrative control of Government of India and the TA is barred by limitation. It is also averred that one time exercise as per the directions in the judgment of Hon'ble Apex Court has been carried out by the respondents, but the applicants could not be regularized as they were not found to be eligible for such consideration as per the principles laid down by Hon'ble Apex Court. They were also not eligible to appear in the LDCE as per the circular at Annexure-3, which was also never conducted. It is further averred that the applicants were engaged on contractual basis and are continuing as such and are not eligible for regularization of service on account of their length of service on contractual basis or to participate in the LDCE as per circular at Annexure-3.

5. Rejoinder has been filed by the applicant stating that they are being engaged continuously since 1.9.1993 for more than 26 years and that although the applicants have filed representation for regularization of their services, it was not considered. It is further averred that regularization of service is a continuing cause of action, for which the question of delay will not affect the

TA. It is further stated that they were earlier engaged on contractual basis till October, 1995 and thereafter, they are being engaged continuously with the basic pay plus DA from 17.9.1999. It is also stated that as per the judgment of Hon'ble Apex Court in the case of State of Karnataka vs. M.L. Keshari in SLP (C) No. 15774/2006, the applicants are entitled for regularization on completion of 10 years of service and that the applicants are also doing the job of the Clerk-cum-Typist in addition to the duty as Junior Accountant. It is claimed that they are entitled for the post of Junior Accountant. It is further stated by the applicants that in one case of Sri Kamakhya Prasad Dwivedi, who was initially appointed on contractual basis, he was regularized as per order dated 25.8.1993 although he never appeared in any written examination. It is stated that one Judhistira Dang, who was also appointed on ad hoc basis as casual labourer, and was denied regularization vide order of the Tribunal in OA No. 2783(C)/2002. The decision was challenged before Hon'ble High Court in W.P. (C) No. 8446/2009, which was allowed vide order dated 15.2.2012 (Annexure-20 of the Rejoinder) relying on the judgment of Hon'ble Apex Court in the case of Uma Devi, Smt. Meera Peri and M.L. Keshari. It is claimed that the applicants are similarly placed as Judhistira Dang and are also entitled for similar reliefs.

6. Additional Counter has been filed by the respondents in reply to the Rejoinder, stating that since the applicants had been allowed to participate the selection for the post of Junior Accountant as per the circular at Annexure-10, the contention that they were not considered for the said post is not valid. The applicants failed to secure the minimum prescribed marks for selection. The circular at Annexure-3 was issued in 2002 by the then Dy. Director (personnel) only for regular employees and the said LDCE was never conducted. It is stated that non-selection of the applicants in pursuance to the examination at Annexure-10 is another cause of action. It is stated that since the selection process as per the circular at Annexure-3 was never conducted, the TA has become infructuous.

7. Heard learned counsels for the applicant as well as the respondents, who reiterated the contentions in their respective pleadings. The applicants' counsel filed a copy of the order dated 3.2.2012 of Bangalore Bench of this Tribunal in OA No. 297/2011(Smt. Susheela & others vs. UOI & others) and copy of the judgment in the case of M.L. Keshari (supra) in support of his case. Respondents' counsel filed a Memo enclosing a copy of the minutes of 71st meeting of the finance committee of SAI in support of the contention that the applicants' case was considered for regularization, but they were not found eligible.

8. We have perused the pleadings and considered the submissions by both the sides. Two reliefs are sought for by the applicant in the TA. First is to declare the applicants to be eligible for the LDCE for the post of Junior Accountant and second is to treat them as regular employee after 10 years from the initial engagement in 1993 in accordance with the judgment in the case of M.L. Keshari (supra). On perusal of the judgment in OA No. 297/2012, it is seen that in that OA, the respondents were directed to extend the benefit of temporary status scheme and to regularize as per the scheme of 1993 and in compliance of Uma Devi judgment. Regarding judgment of Hon'ble Apex Court in M.L.Keshari (supra), the respondents have taken a plea that they have conducted one time exercise for regularization as per the judgment in the case of Uma Devi and the applicants' case was not found to be eligible and that the applicants have been extended the benefit of temporary status scheme. Hence, both the judgments cited by the applicant's counsel will not be helpful for their case in this TA.

9. The respondents have averred that the applicants' case were considered for regularization as a part of one time exercise for regularization as per the direction of Hon'ble Apex Court and the applicants were found to be ineligible for regularization. The minutes of 71st meeting of the finance committee held on 3.7.2015 placed by the respondents' counsel through a Memo, show that 65 casual labourers (including two applicants of this TA) were granted temporary status as per the Scheme of 1993. It is also stated that one time exercise was held as per the DOPT instructions dated 11.12.2006 as per the criteria laid down by Hon'ble Apex Court and 22 casual labourers were regularized leaving out 65 casual workers (including the applicants), who were allowed 'temporary status' as per the decision of the finance committee.

10. From above, the fact that both the applicants have been allowed the benefit under the 1993 Scheme of the DOPT for granting temporary status as per the 71st meeting of the finance committee is undisputed. The benefits of temporary status have been also allowed to the applicants as revealed from the said decision of the finance committee of SAI. One of the benefit of the temporary status is the benefit of regularization of services against two out of three Group D vacancies as stated in Annexure-C of the agenda note for the 71st meeting for the finance committee submitted by the respondents' counsel, which states as under:-

"10. Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any

reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfill the minimum qualification prescribed for post, regularization will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer.”

11. In view of the facts above, the applicants will be eligible for regularization against the vacancies of Group-D posts. The respondents were required to act in accordance with the benefits already allowed to the applicants by granting them temporary status as per the decision of the finance committee in its meeting held on 3.7.2015 by considering the case of the applicants for regularization against two out of three vacancies in Group-D posts after 3.7.2015. If it is not done, then their case deserves to be reconsidered for regularization against two out of three Group-D vacancies arising in SAI after 3.7.2015 as per the provisions extracted at paragraph 14 of this order. Respondents are directed accordingly.

12. Regarding other prayer for eligibility for the post of Junior Accountant, as per the subsequent notification at Annexure-10 of the TA for filling up Junior Accountant, the applicants were eligible as casual employees, which shows that there is nothing in the rules/circular for recruitment for the post of Junior Accountant to make the applicants ineligible. The respondents have not furnished any rules or guidelines relating to recruitment for the post of Junior Accountant to show that the applicants are ineligible for participation in departmental promotion/selection quota for Junior Accountant post. It is also noticed that two posts of Junior Accountant has been kept vacant as per the order dated 12.3.2003 of Hon’ble High Court. Hence, the respondents are directed to consider for filling up of these two posts of Junior Accountant in addition to any other vacant post of Junior Assistant to be filled up through promotion or departmental selection by issue of appropriate notification as per the rules of guidelines to fill up such posts. In the event of such notification issued, the applicants will be allowed to participate in the departmental promotion/selection process for the post of Junior Accountant as per the extant procedure/rules.

13. The TA is allowed in terms of the directions at the paragraphs 11 and 12 of this order. Respondents are required to communicate the decision taken on these directions to the applicants within four months from the date of receipt of a copy of this order. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

